No. 84940-4

SUPREME COURT OF THE STATE OF WASHINGTON

DAVID KOENIG,
Respondent/Cross-Petitioner,

v.

THURSTON COUNTY and the THURSTON COUNTY PROSECUTING ATTORNEY,
Petitioners/Cross-Respondents.

SUPPLEMENTAL BRIEF OF THURSTON COUNTY

JON TUNHEIM
PROSECUTING ATTORNEY

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COURT RULES

Pursuant to RAP 13.7(d), Thurston County submits this Supplemental Brief to address issues that need additional clarification and development.

I. ARGUMENT

A. Koenig Failed To Provide Any Expert Affidavits In Support Of His Motion For Summary Judgment.

One important issue that needs to be addressed further is the fact that this case began with the granting of summary judgment in favor of Thurston County. While Koenig failed to support his motion with affidavits of experts, Thurston County did provide declarations under oath from experts with vast experience in both Special Sex Offender Sentencing Alternative ("SSOSA") psychosexual evaluations and victim impact statements ("VIS"). CP 100, 104, 109, 116, 121, 277. Rather than provide any experts, Koenig resorted to name calling. He alleges that Sex Offender Treatment Therapist Robert Macy, Deputy Prosecuting Attorney Jon Tunheim, attorney and co-chair of the Washington Association of Criminal Defense Lawyers Amy Muth, attorney and legal director at the Washington Coalition of Sexual Assault Programs Catherine Carroll, Executive Director of the Washington Coalition of Crime Victim Advocates David Johnson, and Thurston County Prosecuting Attorney's Office Victim Advocate Kim Carroll are not being truthful under oath. *See*

Respondent's Answer, pg. 11, 12, 19. Yet, Koenig has failed to provide any evidence from experts that work with SSOSA evaluations or VISs in opposition to the County's trial court declarations. In this case, under this set of circumstances, the trial court properly ruled in Thurston County's favor as there were no facts in dispute. The court found as a matter of law, based on the undisputed facts and expert opinion, that the SSOSA psychosexual evaluation and VIS were exempt under RCW 42.56.240(1).

While Koenig was the party bringing the motion for summary judgment, courts have long held that summary judgment may be granted in favor of the nonmoving party if it becomes clear that he or she is entitled thereto. *Rubenser v. Felice,* 58 Wn.2d 862, 866, 365 P.2d 320 (1961); *Impecoven v. Department of Revenue,* 120 Wn.2d 357, 365, 841 P.2d 752 (1992) (summary judgment for nonmoving party entered by appellate court). Koenig never once challenged the trial court regarding whether it was proper to rule in favor of the nonmoving party. Nor did Koenig ask for more time to prepare declarations in opposition to the County's expert and fact witnesses.

While Thurston County provided facts related to the specific case from the victim, the deputy prosecuting attorney, the victim advocate and the sex offender treatment therapist, Koenig provided nothing but unrelated facts from other cases. For example, Koenig argues against the

fact that SSOSA evaluations are provided to a prosecutor's office for negotiation by unequivocally stating that a SSOSA evaluation is ordered by the court. Koenig cites to *State v. Bank*, 114 Wn. App. 280, 287, 57 P.3d 284 (2002) in support of his proposition. *See* Koenig's Answer To Brief Of Amici Curiae, pg. 2. However, the facts in *State v. Bank* are not the facts in this matter. The testimony provided by the experts show that SSOSA evaluations are voluntarily provided to the prosecuting attorney's office for negotiation purposes.[1] CP 106-107, 110-111. Even the trial court in this matter found that SSOSA evaluations have an important role in a defendant's ability to bargain for a plea agreement. CP 247. Koenig has the criminal file in this matter and knows that the Court did not order the June 26, 2000 SSOSA evaluation. CP 70. Attempting to take facts from a completely different case does not create issues of fact or require reversal of a trial court's grant of summary judgment.

Another example of Koenig's argument outside the facts relates to the VIS. Koenig's argument that the VIS was open to everyone through the court proceeding is an unsupported allegation that does not defeat summary judgment. "Unsupported argumentative assertions are not

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[1] When examining claimed exemptions, this Court has noted that affidavits from those with direct knowledge of and responsibility for the activity provide guidance. *Newman v. King County*, 133 Wn.2d 565, 573, 947 P.2d 712 (1997).

sufficient to defeat summary judgment." *Vacova Company v. Farrell*, 62 Wn. App. 386, 395, 814 P.2d 255 (1991). The undisputed facts in this case establish that the victim put her statement in writing, she did not want the public to have her statement and the judge sealed the VIS. CP 125-126. Even the trial court judge who has direct experience with VISs found that a written VIS is not open to everyone.

> Here, the victim impact statement was procured by the prosecutor as part of their statutory duty to investigate and make recommendations on sentencing to the court...

CP 248.

> Public disclosure of information contained in the victim impact statement is the type that would not generally be shared with strangers. Though, admittedly, it is prepared for presentation in open court, it is prepared only for, and directly to, the sentencing judge alone. The victim impact statement is not directed to the defendant, the attorneys, the public, or any other person in the courtroom. The victim also has the option of submitting their experience to the judge in writing thereby avoiding the possible traumatic experience of sharing these personal details in open court.

CP 249-250.[2] Koenig's unsupported argumentative assertions regarding the availability of the VIS must not be considered.

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[2] Coincidentally, this is the same judge that issued the Judgment and Sentence in the Lerud case (the underlying criminal matter). CP 132-138.

B. The SSOSA Psychosexual Evaluation Prepared By A Certified Health Professional Was Clearly Health Care Information And The Record Did Not Need To Be Further Developed In This Regard.

1. The SSOSA evaluation can be considered health care information by this Court.

The Court of Appeals did not consider the SSOSA evaluation as health care information as it decided the record was not sufficiently developed on that point. It is the County's position that nothing needs to be added to the record with regard to the SSOSA evaluation as the legislature has defined a SSOSA evaluation as health care information. The County's error was assuming it was obvious that an evaluation done by a certified sex offender treatment therapist was health care information. While this was not a specific argument brought forward by Koenig in his motion for partial summary judgment, the facts showing that the SSOSA evaluation was health care information were in the record through the Declarations of Robert Macy and Amy Muth. CP 100-103, 110-112.[3]

The County believes that this characterization of the SSOSA evaluation was properly brought at the Court of Appeals to strengthen the

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[3] The County argued in its Court of Appeals response brief, as one reason the SSOSA evaluation meets the privacy test under the Public Records Act, that a SSOSA psychosexual evaluation is private health care information. *See* Thurston County's Response Brief, Court of Appeals, filed June 30, 2008, pg. 25-26, 28-29, 33. Koenig had ample opportunity to address this fact in his reply brief that was filed over two months later, on September 2, 2008. Also, an amicus curiae brief supporting Koenig and addressing the County's Response Brief was allowed by the Court of Appeals on January 8, 2009.

privacy argument involved in Koenig's motion for partial summary judgment. If this Court disagrees with the County, the County would ask that it still be considered under the facts of this case.

RAP 2.5(a) provides that, "[a] party may present a ground for affirming a trial court decision which was not presented to the trial court if the record had been sufficiently developed to fairly consider the ground." RAP 2.5(a). The authority to review new issues has also been addressed by the Supreme Court of Washington.

> Ordinarily, the failure of the parties to raise an issue would preclude its examination at this stage. However, this court has frequently recognized it is not constrained by the issues as framed by the parties if the parties ignore a constitutional mandate, **a statutory commandment**, or an established precedent...This court has the inherent discretionary authority to reach issues not briefed by the parties if those issues are necessary for decision.

Seattle v. McCready, 123 Wn.2d 260, 269, 868 P.2d 134 (1994) (emphasis added).

> Courts are created to ascertain the facts in a controversy and to determine the rights of the parties according to justice. Courts should not be confined by the issues framed or theories advanced by the parties if the parties ignore the mandate of a statute or an established precedent. A case brought before this court should be governed by the applicable law even though the attorneys representing the parties are unable or unwilling to argue it.

Maynard Inv. Co., Inc. v. McCann, 77 Wn.2d 616, 623, 465 P.2d 657 (1970).

> [A] statute not addressed below but pertinent to the substantive issues which were raised below may be considered for the first time on appeal.

Bennett v. Hardy, 113 Wn.2d 912, 918, 784 P.2d 1258 (1990).

> Although we do not normally consider issues not raised below and not raised in the petition for review, in this case the argument is pertinent to the substantive issues raised below and necessary to our rendering a proper decision...We note that respondents had ample opportunity to address the argument in both their brief in reply to amicus and supplemental brief.

City of Spokane v. Rothwell, 166 Wn.2d 872, 880 n. 9, 215 P.3d 162 (2009).

2. The record in this matter does establish the SSOSA evaluation as private health care information.

The County believes the record on appeal is sufficient to fairly consider whether a SSOSA evaluation is health care information. Lerud's crimes relating to the SSOSA occurred in February 2000. CP 132. The 14 page SSOSA psychosexual evaluation is dated June 26, 2000. CP 70. Koenig's PRA request was made on August 17, 2000. CP 142. The Judgment and Sentence for those crimes was filed on October 23, 2000. CP 132. Reviewing the SSOSA related laws in effect at the time all of the above events took place makes clear that a SSOSA evaluation is health care information.

RCW 18.155.020(1) provides, in part, as follows:

> (1) "Certified sex offender treatment provider" means a licensed, certified, or registered **health professional** who is certified to **examine and treat** sex offenders...

RCW 18.155.020(1) (emphasis added).[4] RCW 18.155.010 provides, in part, as follows:

> The legislature finds that **sex offender therapists who examine and treat sex offenders** pursuant to the special sexual offender sentencing alternative...play a vital role in protecting the public from sex offenders who remain in the community following conviction...The legislature recognizes the right of sex offender therapists to practice, consistent with the paramount requirements of public safety. Public safety is best served by regulating sex offender therapists whose clients are being evaluated and being treated pursuant to [SSOSA]...

RCW 18.155.010 (emphasis added).[5] Chapter 18.155 RCW, as provided in 2000 and today, is geared at having the Washington State Department of Health and the Secretary of Health regulate Certified Sex Offender Treatment Providers as health professionals. RCW 18.155.020(1)(3)&(4), RCW 18.155.050, RCW 18.155.070.

Pursuant to former 18.155.040 (Laws of 1996, ch. 191 §86), the Washington State Secretary of Health promulgated the following WAC provisions that make it clear that a Certified Sex Offender Treatment

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[4] For purposes of the quoted language from RCW 18.155.020, the language is the same now as it was in 2000.

[5] For purposes of the quoted language from RCW 18.155.010, the language is the same now as it was in 2000.

Provider is a health professional. The quoted language below are excerpts from WAC provisions in effect in 2000.

> (1) Under RCW 18.155.020(1), **only credentialed health professionals may be certified as providers**.
> (2) A person who is **credentialed as a health professional** in a state or jurisdiction other than Washington may satisfy this requirement by submitting the following:...

WAC 246-930-020(1)(2) (emphasis added).

> (1) An applicant shall have completed:
> (a) A master's or doctoral degree in social work, psychology, counseling, or educational psychology from a regionally accredited institution of higher education; or
> (b) A medical doctor or doctor of osteopathy degree if the individual is a board certified/eligible psychiatrist; or
> (c) A master's or doctoral degree in an equivalent field from a regionally accredited institution of higher education with documentation of thirty graduate semester hours or forty-five graduate quarter hours in approved subject content. Approved subject content includes at least five graduate semester hours or seven graduate quarter hours in (c)(i) and (ii) of this subsection and five graduate semester hours or seven graduate quarter hours in at least two additional content areas from (c)(i) through (viii) of this subsection:
> (i) Counseling and psychotherapy.
> (ii) Personality theory.
> (iii) Behavioral science and research.
> (iv) Psychopathology/personality disorders.
> (v) Assessment/tests and measurement.
> (vi) Group therapy/family therapy.
> (vii) Human growth and development/sexuality.
> (viii) Corrections/criminal justice.
> ...

WAC 246-930-030(1).

> (1) To qualify for examination, an applicant must complete at least two thousand hours of **treatment and evaluation**

> **experience**, as defined in WAC 246-930-010. These two thousand hours shall include at least two hundred fifty hours of **evaluation experience** and at least two hundred fifty hours of **treatment experience**.
> (2) All of the prerequisite experience shall have been within the seven-year period preceding application for certification as a provider.

WAC 246-930-040 (emphasis added). The WAC provisions provide information that lead to the conclusion that a Certified Sex Offender Treatment Provider is a health care provider.

Turning to the record in this case, Robert Macy provides:

> My practice, Robert Macy and Associates, is located at 7602 Henderson Blvd. S.E. Olympia, Washington. I have a Masters Degree in clinical psychology and marriage, family and child counseling. I have been a sex offender treatment therapist since 1974 and have been providing evaluations and treatment to the sexual offender, their victims and their families in the state of Washington since 1979. I am one of the first treatment providers in the state of Washington to be granted certification as a **Fully Certified Sex Offender Treatment Provider**. My Certification number is FC0004. Since provisions were made in the State of Washington regarding the Special Sex Offender Sentencing Alternative (SSOSA) option I have been providing evaluations for those men and women who qualify for the SSOSA.

CP 100.

The evidence in the record states that Robert Macy is a Certified Sex Offender Treatment Provider. CP 100. Further, Robert Macy is the Certified Sex Offender Treatment Provider in the case involving Mr. Lerud. CP 136. As a health care professional, the information he places

into an evaluation about Mr. Lerud is health care information.

Several definitions from RCW 70.02.010[6] are also helpful in analyzing this issue.

> "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.
>
> "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care...
>
> "Patient" means an individual who receives or has received health care...
>
> "Health care" means any care, service, or procedure provided by a health care provider:
> (a) to diagnose, treat, or maintain a patient's physical or mental condition; or
> (b) That affects the structure or any function of the human body."

Former RCW 70.02.010 (Laws of 1993, ch. 448, §1) & RCW 70.02.010.

In this case, Robert Macy provided an extensive declaration describing methods used to develop SSOSA psychosexual evaluations and how they are utilized. CP 100-103. Amy Muth has also provided a declaration regarding SSOSA evaluations. CP 110-112. There is a significant amount of information in the record describing the details of a

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[6] For purposes of the quoted language from the definitions found in RCW 70.02.010, the language is the same now as it was in 2000.

SSOSA evaluation. It is clear from the declarations and the provisions cited above from chapter 9.94A RCW, chapter 18.155 RCW and chapter 246-930 WAC that such evaluations are used to diagnose and treat a patient's mental condition. Since this evaluation is produced by a Washington State Certified Sex Offender Treatment Provider, it is health care information as it is information that is readily associated with Mr. Lerud and directly relates to the diagnosis of Mr. Lerud's mental condition and a determination of whether he is a sexual deviant and is amenable to treatment. CP 102; CP 111. In this case, Mr. Lerud was found to qualify for SSOSA and was ordered to undergo outpatient sex offender treatment. CP 136. The County asks this Court to find that the SSOSA evaluation is health care information.

3. Nondisclosure of health care information in the hands of the Prosecuting Attorney's Office is mandated by statute.

A defendant can *voluntarily* seek evaluation by a Certified Sex Offender Treatment Provider when charged with a sex crime. A prosecuting attorney's office obtains SSOSA evaluations through the criminal defendants being prosecuted for sex crimes. CP 106-107; CP 110-111. The patient (defendant) of a Certified Sex Offender Treatment Provider consents to allow the Prosecuting Attorney's Office to obtain a copy of the evaluation with an expectation by everyone that it would remain confidential. CP 106-

107; CP 101-103; CP 112-113. In 1991, the legislature issued a series of findings directly relating to health care information.

> The legislature finds that:
> ...
> (4) Persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is **the public policy of this state** that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers.

RCW 70.02.005(4) (emphasis added). Clearly, the public policy of the State of Washington supports the County's withholding health care information unless it receives written authorization from Mr. Lerud. It is the public policy of this State that Mr. Lerud's interest in the proper use and disclosure of his SSOSA psychosexual evaluation survives when in the hands of the Prosecuting Attorney's Office. There is nothing in chapter 70.02 RCW that describes, as proper, the providing of health care information to someone such as Mr. Koenig making a request under the PRA. Instead, the proper disclosure of health care information that "survives" even when "others" obtain such information is described in RCW 70.02.020.

> Except as authorized in RCW 70.02.050, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization...

RCW 70.02.020.[7] There is nothing in RCW 70.02.050 that would allow disclosure without authorization from Mr. Lerud. Further, the Public Records Act recognizes chapter 70.02 RCW. RCW 42.56.360(2).

Considering the legislative finding expressing the public policy of the State of Washington for health care information, the County acted properly in withholding Mr. Lerud's health care information under RCW 42.56.240(1).

> RCW 42.56.240 provides in relevant part:
>
> The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:
> ...
> (1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies...the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

RCW 42.56.240(1). RCW 42.56.050 provides the statutory standard to determine when a person's right to privacy would be violated from a disclosure under the Public Records Act.

> A person's "right to privacy," ...is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public...

RCW 42.56.050.

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[7] For purposes of the quoted language from RCW 70.02.020, the language is the same now as it was in 2000.

The Court of Appeals decided the privacy issue without considering that the SSOSA evaluation was health care information and the legislative finding that it is the **"public policy of this state** that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers." RCW 70.02.005(4) (emphasis added). The legislature has made it clear that **health care information is not of legitimate concern to the public** and must be only disclosed in keeping with chapter 70.02 RCW. To allow the disclosure of health care information ignores this legislative finding. The legislature also found that, "Health care information is personal and sensitive information that if improperly used or released may **do significant harm to a patient's interests in privacy, health care or other interests**." RCW 70.02.005(1) (emphasis added).[8] The legislature provides that the public policy of the State of Washington is to protect health care information from disclosure unless allowed under chapter 70.02 RCW. This policy statement alone should tip the "privacy scales" in favor of nondisclosure.

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[8] As Judge Armstrong point out in his dissenting opinion, "convicted sex offenders do not completely surrender their right to privacy. RCW 4.24.550 does not authorize a broad disclosure of information about a sex offender to the public. Rather, the legislature's pronouncement 'evidences a clear regulatory intent to limit the exchange of relevant information to the general public to those circumstances which present a threat to public safety'" *Koenig v. Thurston County*, 155 Wn. App. 398, 425, 229 P.3d 910 (2010).

C. Destruction Or "Removal" Of Public Records Is Not A Viable Solution For Public Records Located In The Files Of The Thurston County Prosecuting Attorney's Office.

In his dissent, Judge Bridgewater suggests a solution to the issue of a prosecuting attorney's office obtaining a copy of a victim impact statement that is used for sentencing purposes.

> As a solution, I suggest that the prosecutor's office not keep a copy of the impact statement after sentencing. It serves no purpose after the sentencing and potentially places discretion in the prosecutor's hands the decision to disclose or not, independent of the court. I have no objection to the prosecutor assisting the victim in preparing the statement or in the decision to make it in writing or orally. But, there is no purpose served by the prosecutor's office retaining a copy in its file. By retaining a copy, the victim's impact statement became discloseable. If the prosecutor's office had not kept the statement, Koenig would have had to go to the court and petition for release of a sealed document. He would have to provide a sufficient reason for disclosure; idle curiosity would not suffice. And, if the prosecutor needed to review the statement, he or she, as a party, could do so with the proper rationale.

Koenig v. Thurston County, 155 Wn. App. 398, 423, 229 P.3d 910 (2010). This is not a workable solution for any public record as it would violate the law. RCW 40.14.060(1) provides that "destruction of official public records shall be pursuant to a schedule approved under RCW 40.14.050." See also RCW 40.14.070(2)(a) and RCW 40.16.010. The Local Government General Records Retention Schedule ("LGGRRS") provided by the Office of the Secretary of State requires a prosecuting attorney's

file for a sex offender case be held for 20 years after sentencing. LGGRRS Item No. 19.5 (Version 5.2, December 2010). The separate victim case file of the Thurston County victim advocate is to be held for 6 years. LGGRRS Item No. 19.31 (Version 5.2, December 2010).

The statement from the Bridgewater dissent fails to recognize that the VIS is used by a prosecuting attorney in making sentencing recommendations and properly belongs in the prosecutor's case file, as well as the prosecuting attorney's victim advocate file. The trial court recognized this function when it ruled on the motion for summary judgment.

> Here, the victim impact statement was procured by the prosecutor as part of their statutory duty to investigate and make recommendations on sentencing to the court...

CP 248.

It is worth repeating that victims are to be treated with dignity and respect.

> In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime and the civic and moral duty of victims, survivors of victims, and witnesses of crimes to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to grant to the victims of crime and the survivors of such victims a significant role in the criminal justice system.

> The legislature further intends to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity; and that the rights extended in this chapter to victims, survivors of victims, and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants.

RCW 7.69.010. Providing the VIS in this case does not honor or protect the victim as required under RCW 7.69.010. Also, allowing the public to view a VIS does not protect the victim from the psychological harm caused by having personal details disclosed. The victim in this case did not have to cooperate with the Prosecuting Attorney's Office and provide the VIS to assist with the sentencing investigation. RCW 7.69.030(4) requires reasonable efforts to be made to ensure that victims "receive protection from harm ... arising out of cooperation with prosecution efforts..." RCW 7.69.030(4). It is imperative that the Court of Appeals decision is upheld with regard to the VIS in order to follow these legislative directives.

II. CONCLUSION

At times, responding to a public records request is not as easy as Koenig would like this Court to believe. While most public records requests are quite simple, there are those where agencies have to consider many factors along with the realization that huge liability weighs in the balance if the agency is found to have improperly withheld a record. This

is particularly tough when dealing with an issue of first impression involving subjective tests. Fortunately, this case involves two documents and evidence that clearly weigh in favor of nondisclosure. When you consider this Court has held that *public* employment evaluations are exempt if they don't contain specific incidents of misconduct, it seems an easy call on a record containing very private information of private individuals lacking any details about a public agency. *See Dawson v. Daly*, 120 Wn.2d 782, 796-800, 845 P.2d 995 (1993), *overruled on other grounds by Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 884 P.2d 592 (1995).

Thurston County agrees with and supports the purpose behind the Public Records Act which is to allow transparency for the public to see how government is being run. *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978). However, in this case, the SSOSA evaluation and the VIS were not prepared by public officers and they do not contain information about a public agency that would assist the public with governmental transparency in any meaningful way. The Public Records Act does not support the argument that the public needs to know personal information about a private individual in order to retain sovereignty over the government. The polices behind the PRA for open government do not, in any meaningful way, apply to the SSOSA evaluation and the VIS in this

matter. The balance tips in favor of nondisclosure when considering the legislative policies, privacy interests and need for effective law enforcement involved with these two sensitive documents.

Based on Thurston County's Petition For Review, Reply To Respondent Koenig's Answer To The Petition For Review, Brief Of Amici Curiae by the Washington Defender Association and the Washington Association of Criminal Defense Lawyers, and this Supplemental Brief, Thurston County respectfully requests that this Court find the SSOSA evaluation and the VIS exempt from disclosure in their entirety.

DATED this 4th day of February, 2011.

JON TUNHEIM
PROSECUTING ATTORNEY

JEFFREY G. FANCHER, WSBA #22550
Deputy Prosecuting Attorney

A copy of this document was properly addressed and mailed, postage prepaid, to the following individual(s) on February 4, 2011.

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I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Signature: _____

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

DAVID KOENIG, Respondent/Cross-Petitioner, vs. THURSTON COUNTY, et al., Petitioners/Cross-Respondents.	No. 84940-4 SUBSTITUTION OF COUNSEL

TO: The Honorable RON CARPENTER, Clerk of the Supreme Court, and
TO: William John Crittenden, Attorney at Law, attorney for Respondent/Cross-Petititoner; and
TO: Amy I. Muth, Law Office of Amy Muth, Co-counsel for Amici WDA & WACDL; and
TO: Travis Sterns, Washington Defender Association, Co-counsel for Amici WDA & WACDL; and
TO: Suzanne Lee Elliott, WA Association of Criminal Defense Lawyers, Co-counsel for Amici WDA & WACDL; and
TO: Michael C. Kahrs, Attorney at Law, Attorney for Amicus WA Coalition for Open Government.

You are hereby respectfully notified that JON TUNHEIM, Prosecuting Attorney, is substituted for EDWARD G. HOLM, former Prosecuting Attorney, and all further pleadings and papers in this cause, except original process, may be served upon the substituted attorney at the

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address appearing below.

DATED this 2nd day of February, 2011.

JON TUNHEIM
PROSECUTING ATTORNEY

EDWARD G. HOLM, WSBA #1455

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JON TUNHEIM, WSBA #19783

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I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
Olympia, Washington.

Signature:

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OFFICE RECEPTIONIST, CLERK

To: Sandra Sage
Cc: Fancher, Jeff
Subject: RE: Koenig v. Thurston County, et al, No. 84940-4

Rec. 2-4-11

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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Sent: Friday, February 04, 2011 11:11 AM
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Cc: Fancher, Jeff
Subject: Koenig v. Thurston County, et al, No. 84940-4

Attached you will find a Substitution of Counsel and Supplemental Brief of Thurston County for filing. Thank you for your assistance.

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